IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.715/2001

Shriniwas S/o Shri Balmukand
...Accused-Appellant
Versus
The State of Rajasthan through P.P.

Date of Judgment :::: 16th of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri P.N. Paliwal, Counsel for accused-appellant
Shri Arun Sharma, P.P., for the State

By the Court:-

The Additional District & Sessions Judge, Dholpur, vide its judgment and order dated 8th of August, 2001 in Sessions Case No.90/2001, convicted and sentenced accused-appellant Shriniwas under Section 376 (2)(g) of the Indian Penal Code to ten years rigorous imprisonment and a fine of Rs.5000/-; in default of payment of fine, to further undergo three months additional imprisonment.

PW-1 Tula Ram S/o Janki Prasad lodged a written report (Exhibit P-1) dated 17th of February, 2001 at Police Station Dihauli, District Dholpur, wherein it was alleged that on 16.2.2001 two persons, namely,

Shriniwas and Inderpal were Conductor and Driver on Truck No.MP-07-2177 and they also consumed a liquor. At about 2'O clock his niece Madhuri D/o Sowaran Singh, aged about 4 years, was coming from the school; Shriniwas and Inderpal, both, stopped Madhuri and took her to the temple of Mata, where they committed forcible sexual intercourse with her. Her niece is unconscious. The blood is coming from her private parts and there are injuries on her person also. On the basis of this report, an FIR No.20/2001 was registered at Police Station Dihauli and investigation commenced. Exhibit P-3, the site-plan, was prepared. Vide Exhibit P-4, the underwear of the prosecutrix was seized on 17.2.2001, itself. Ms. Madhuri was medically examined by the medical-board.

After completion of investigation, the police submitted a challan against the accused-appellants. The learned trial court framed charge against both the accused-appellants under Section 376 (2) IPC, who denied the charge and claimed to be tried.

The prosecution adduced oral and documentary evidence. Thereafter the statement of the accusd-persons were recorded under Section 313, Cr.P.C. No evidence was produced in defence.

After considering the submissions of both the parties and the evidence on the record, the learned trial court acquitted co-accused Inderpal, but convicted and sentenced accused-appellant Shriniwas, as mentioned above. Being aggrieved with the same, accused-appellant Shriniwas preferred the present appeal under Section 374, Cr.P.C., before this court.

The learned counsel for the appellant contended that the accused-appellant is innocent and he has falsely been implicated in the case by the complainant party due to enmity in between him and the complainant party. He also referred the statement of the accused recorded under Section 313 Cr.P.C., wherein he stated about the enmity in between them. The learned counsel for the appellant further contended that the accused-appellant is in jail since the date of his arrest i.e. 25.2.2001 and he has already remained in jail for about five years and eleven months, therefore, his sentence of imprisonment may be reduced to a period of sentence, already undergone by him.

The learned Public Prosecutor has supported the judgment and order of the learned trial court and further contended that looking to the facts and

circumstances of the present case, the appellant deserves no sympathy/leniency even for reduction of sentence.

I have heard learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit P-1, the written-report, was lodged by PW-1 Tula Ram at Police Station Dihauli wherein it was mentioned that Shriniwas and Inderpal, both, were Conductor and Driver on the Truck and both of them consumed liquor on the date of the incident. When Madhuri was coming from the school, both of them caught-hold-of her and committed forcible sexual intercourse with her. Exhibit P-4 is the seizure memo of underwear of Madhuri, which contains the blood stains on it. The prosecutrix was examined by the medical-board and as per the medical-report (Exhibit P-7) dated 17.2.2001, the medical-board opined that there is evidence of penetration of hymen causing injury to Vulva. PW-1 Tula Ram stated before the court about the incident and proved the written-report (Exhibit P-1) as well as the FIR (Exhibit P-2). PW-2 Madhuri, the prosecutrix, was also examined in the case by the prosecution. Certain questions were put to

her to ascertain her understanding-capacity and after recording its satisfaction, the trial court recorded her statement. PW-3 Smt. Kaweri, the mother of the prosecutrix Madhuri, has corroborated the prosecution story about forcible sexual intercourse by the accused persons with Madhuri. PW-4 Longshri W/o Tula Ram has also stated about the incident before the trial court. PW-5 Mansingh is an important and independent witness in the present case, who has stated that he saw the clothes of accused Shriniwas were blood-stained and he asked him as to what happened and, in reply thereto, the accused Shriniwas told him of his consumption of liquor and commission of forcible sexual intercourse with Madhuri. As per the statement of PW-5 Man Singh, it appears that there is extra-judicial-confession of the accused in respect of the incident. PW-9 Dr. S.B. Agarwal, one of the member of the medical-board, stated before the court that he examined Madhuri D/o Sowaran Singh, aged about 4 years, and found the injuries on her person as mentioned in the medical-report (Exhibit P-7). As per the Exhibit P-7, following two injuries were found on the cheek and chest of Madhuri:-

Injuries – (1) 3 Pattern bruise with abrasion resembling human teeth bite on right cheek as shown in figure. Size

of each mark is 2.5 cm to 3 cm x .5 cm.

(2) Pattern bruise with abrasion resembling human teeth bite at right chest wall outeriorly 2 cm. Below and medial to right nipple.

As per the medical-report (Exhibit P-7) the opinion of the medical-board was that there is evidence of penetration of hymen causing injuries to Vulva. PW-10 Dr. Chitra Bansal, another member of the medical-board, has also proved the medical-report (Exhibit P-7) and the injuries sustained by Madhuri. PW-11 Radharaman Gupta, the S.H.O., Police Station Dihauli, was also examined in the matter, who proved the Exhibits of the prosecution and stated about the result of investigation.

The above discussion of the prosecution evidence reveals that the appellant has committed forcible sexual intercourse with Madhuri and thereby committed an offence punishable under sub-section (2) of Section 376, IPC. I have also examined the finding of the learned trial court, who has discussed the prosecution evidence in detail and recorded a finding that the guilt against the appellant is proved beyond reasonable doubt. No illegality or perversity has been pointed out by the learned counsel for the appellant

in the finding of the learned trial court.

So far as the sentence of imprisonment and fine is concerned, I find that this is a case where the age of the prosecutrix is about 4 to 5 years and the finding has already been recorded against the appellant for committing the offence, therefore, looking to all the facts and circumstances of the case in hand, I do not find that the appellant deserve for any sympathy or leniency for reduction of the sentence of imprisonment also. The sentence of imprisonment awarded by the learned trial court is minimum as prescribed under the Section and there are no special reasons for reducing the minimum sentence of imprisonment.

Consequently, I do not find any merit in the appeal and the same is accordingly dismissed.

(Narendra Kumar Jain) J.

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